

# EXHIBIT C

UNITED COURT DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
ECF CASE NO.: 12-CV-1340

- - - - -x

EDWARD L. WHITE, P.C.,

Plaintiff,

-against-

WEST PUBLISHING CORPORATION d/b/a "West", and  
REED ELSEVIER INC., d/b/a LexisNexis,

Defendants.

- - - - -x

VIDEO DEPOSITION OF EDWARD L. WHITE

New York, New York

August 30, 2012

REPORTED BY:

DANIELLE GRANT

Ref: 8095

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August 30, 2011

10:15 a.m.

Video Deposition of EDWARD L. WHITE,  
held at the offices of Weil Gotshal & Manges, LLP,  
767 Fifth Avenue, New York, New York pursuant to  
Notice before DANIELLE GRANT, a Shorthand Reporter  
and Notary Public of the State of New York.

A P P E A R A N C E S:

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1  
2 IT IS HEREBY STIPULATED AND  
3 AGREED that the filing and sealing of  
4 the within deposition be, and the  
5 same are hereby waived;

6 IT IS FURTHER STIPULATED AND  
7 AGREED that all objections, except as  
8 to the form of the question, be and  
9 the same are hereby reserved to the  
10 time of the trial;

11 IT IS FURTHER STIPULATED AND  
12 AGREED that the within deposition may  
13 be sworn to before any Notary Public  
14 with the same force and effect as if  
15 sworn to before the Court;  
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1  
2 VIDEOGRAPHER: Good morning. This  
3 is tape number one of the videotaped  
4 deposition of Edward L. White in the  
5 matter of Edward L. White, P.C. versus  
6 West Publishing Corporation d/b/a West  
7 and Reed Elsevier Inc. d/b/a LexisNexis  
8 in the United States District Court  
9 Southern District of New York. This  
10 deposition is being held at Weil,  
11 Gotshal & Manges LLP, located 767 Fifth  
12 Avenue, New York, New York 10753 on  
13 August 30, 2012 at approximately 10:15  
14 a.m.

15 My name is Richard Ramos and I am  
16 the legal video specialist. The court  
17 reporter is Danielle Grant.

18 Will counsel please introduce  
19 themselves beginning with the party  
20 noticing this proceeding.

21 MR. MARKS: Benjamin Marks from  
22 Weil, Gotshal & Manges, counsel for the  
23 West Publishing Corporation.

24 MR. GERBA: John Gerba from Weil,  
25 Gotshal Manges, also for West.

1  
2 MR. WHITNEY: Craig Whitney from  
3 Morrison Foerster, counsel for  
4 LexisNexis, a division of Reed Elsevier.

5 MS. BRETZ: Emily Bretz, also from  
6 Morrison Foerster, counsel for  
7 LexisNexis.

8 MR. BLUE: Gregory Blue for the  
9 plaintiff.

10 VIDEOGRAPHER: Will the court  
11 reporter please swear in the witness.

12 EDWARD L. WHITE, called as a witness, having been  
13 first duly sworn by Danielle Grant, a  
14 Notary Public within and for the State of  
15 New York, was examined and testified as  
16 follows:

17 EXAMINATION BY

18 MR. MARKS:

19 Q Mr. White, my name is Benjamin  
20 Marks and I represent West Publishing  
21 Corporation in this matter.

22 Would you please state your name  
23 and address for the record.

24 A Edward Leslie White. 3208 Broken  
25 Bow Court, Edmond, Oklahoma 73013.

1 E. White

2 A Intellectual property, both  
3 litigation and patent prosecution, et cetera?

4 Q Yes.

5 A Probably 30 to 40.

6 Q What percentage of your practice is  
7 copyright related?

8 A Small. It varies, but I would say  
9 less than 10 typically.

10 Q How many active litigation matters  
11 is the firm handling right now?

12 A Where cases have been filed?

13 Q Yes.

14 A Thirty.

15 Q Is that a typical caseload for any  
16 given year?

17 A Again, it varies, but for the most  
18 part, yes.

19 Q Give me a range from low end to  
20 high end, recognizing it's approximate.

21 A For the last ten years?

22 Q Sure.

23 A Well, the first year I had ramped  
24 up but I basically took anything that came in  
25 the door so I ended up with a lot of cases, some



1 E. White

2 of which were not the best cases, but. So I  
3 think probably early in my career it would have  
4 been 50, 60, 70, and it's tailed off in terms of  
5 the number now.

6 Q Has there ever been a time where  
7 your firm was handling less than ten cases since  
8 the first year?

9 A No.

10 Q And over the past three years how  
11 many active litigation matters has your firm  
12 handled that have involved at least one court  
13 filing by the firm, that would be dozens of  
14 cases?

15 A Yes.

16 Q Are you the sole owner of Edward L.  
17 White, P.C.?

18 A Yes.

19 Q How many employees does Edward L.  
20 White, P.C. have?

21 A One.

22 Q Has it ever had more than one  
23 employee?

24 A Yes.

25 MR. BLUE: Can I just ask for a

1 E. White

2 clarification. You mean total employees  
3 other than Mr. White.

4 THE WITNESS: Yes.

5 Q No, no, I'm asking for the total  
6 number of employees including Mr. White?

7 A Two. Currently, and yes, it has  
8 had more than two.

9 Q Okay. If you could just walk me  
10 through, since the inception of the firm, how  
11 many other people have worked for the firm, who  
12 they are and what their roles have been?

13 A The last employee I had was Rafael  
14 Glapion, who was an associate. And before him I  
15 had -- I've had over the years several clerks,  
16 you know, honestly there have probably been five  
17 over the years, law school students.

18 Q When have you had any law school  
19 students working for your firm in the past three  
20 years?

21 A Yes, Sierra Freeman in the last  
22 three years.

23 Q And when did Miss Friedman work for  
24 the firm?

25 A Two summers ago, it would have

1 E. White

2 affected any of the fee arrangements you've made  
3 with any of your clients?

4 MR. BLUE: Objection.

5 A Ask that again.

6 Q Has at availability of some of your  
7 court filings on West Law or/and Lexis affected  
8 any of the fee arrangements you had made with  
9 clients?

10 MR. BLUE: Same objection, vague.

11 A I don't know.

12 Q From your perspective has that been  
13 a factor at all?

14 A It's possible.

15 Q Has it ever come up in discussions  
16 over what your fee would be?

17 A It's never come up in discussions.

18 Q Has it ever been part of your  
19 internal calculus about what rates you would  
20 seek to be paid for your representation?

21 A No.

22 Q To your knowledge, has the  
23 availability of some of your court filings on  
24 West Law and Lexis affected your ability to earn  
25 fees from clients?

1 E. White

2 A I believe it has.

3 Q How so?

4 A I believe part of what I offer  
5 is -- I've done certain kinds of cases, I've  
6 royalty cases, I've done copyright, both  
7 prosecution and defense, I've done patent  
8 infringement and defense cases. And to the  
9 extent people can take my work now and use my  
10 work in a fairly simple fashion, I think that  
11 that set of information I have has a value and I  
12 think it's been decreased.

13 Q Have you ever attempted to measure  
14 the amount by which the value of your work has  
15 been decreased?

16 A I don't know how I would do that.

17 Q Do you know how anyone would do  
18 that?

19 A I'm not in that kind of business  
20 but I suspect there's probably some way to make  
21 an analysis.

22 Q But sitting here today you're not  
23 aware of any way to make that analysis?

24 A Correct.

25 Q Has the availability of some of

1 E. White

2 your court filings on West Law and Lexis  
3 affected your cost of providing legal advice to  
4 clients?

5 A Potentially. I hadn't thought  
6 about that.

7 Q How has it affected the cost, your  
8 cost of providing legal services to clients?

9 A I'm just kind of, thinking out  
10 loud, but I pay for Lexis services, and to the  
11 extent Lexis collecting briefs, it could have  
12 affected it and made my legal service more  
13 expensive if they're spending money collecting  
14 services and charging more or less or it could  
15 have lessened it. It I don't know how it would  
16 affect it, but it's an indirect effect if there  
17 is one.

18 Q And sitting here today, you have no  
19 knowledge of whether or not that Lexis's  
20 collection of briefs has had any impact on the  
21 pricing of the services you that you purchase  
22 from Lexis?

23 A Yes.

24 Q Same answer as to West Law for the  
25 period for you were a West Law subscriber?

1 E. White

2 his own behalf or on behalf of a client?

3 Q On your own behalf?

4 A Yes.

5 Q And you had your own firm for ten  
6 years before registering a single copyright,  
7 correct?

8 A Yes. For --

9 Q On my own behalf.

10 And is it fair to say that your  
11 firm has prepared hundreds of court filings?

12 A Yes.

13 Q Is it fair to say thousands of  
14 court filings?

15 A Probably.

16 Q Do you have any understanding of  
17 whether copyright registration is a common  
18 practice among law firms or attorneys with  
19 respect to court filings they prepare on behalf  
20 of clients?

21 A I haven't asked.

22 Q You don't have an understanding one  
23 way or the other?

24 A Correct.

25 Q Are you aware of any other

1 E. White

2 attorneys or law firms with registered  
3 copyrights in court filings?

4 A Again, I haven't asked, so, and I  
5 haven't done the search, so no.

6 MR. MARKS: I'd like to mark as  
7 White Exhibit 5 a copy of a two-page  
8 document bearing the Bates numbers  
9 P00119 and 120.

10 (Certificate of Registration was  
11 marked as White Exhibit No. 5 for  
12 identification, as of this date.)

13 Q Mr. White, have you seen White  
14 Exhibit 5 before?

15 A Yes.

16 Q What is White Exhibit 5?

17 A It's a certificate of registration  
18 for a brief.

19 Q And the title of the brief is  
20 Plaintiffs' Combined Motion for Summary Motion  
21 for Plaintiffs and Ramsey and brief in support,  
22 correct?

23 A Yes.

24 Q And this was the summary judgment  
25 motion that you filed in the Beer v. XTO Energy

1 E. White

2 case on behalf of Miss Beer and Miss Bique in  
3 their seeking of termination of liability on  
4 their individual claims?

5 A Correct.

6 Q What is the reference to the date  
7 of first publication on this form?

8 A Are you asking me what the date is?

9 Q I see that the date is May 20,  
10 2009, and what I'm asking is what is that date a  
11 reference to? What happened on that date?

12 A I believe that's when it was filed.

13 Q Was there any distribution of the  
14 motion and brief in support by you other than  
15 filing it with the court?

16 A I believe we sent it to the client  
17 by regular mail -- the clients by regular mail.  
18 And there may have been others, but that is a  
19 likely one.

20 Q Did you serve it on opposing  
21 counsel?

22 A Via the court system it does that  
23 automatically.

24 Q And other than filing the document  
25 with the court and mailing a copy of it to your



1 E. White

2 clients, are you aware of any distribution by  
3 you or on your behalf to anyone else?

4 A I believe I probably provided it to  
5 the experts as well that were involved in that  
6 case, but I -- and there may have been others.

7 Q Anyone else you can think of  
8 sitting here today?

9 A Not that I can think of sitting  
10 here today.

11 Q Is there anyone else who authorized  
12 it -- authorized to distribute this document on  
13 behalf of the firm?

14 A Other than myself and Jan?

15 Q Correct?

16 A And Marty could have distributed it  
17 on behalf of the firm. He may have sent it to  
18 someone, I don't know.

19 Q You're not aware of Miss Inman or  
20 Mr. -- excuse me, Dr. High distributing a copy  
21 of this brief to anybody who wasn't either a  
22 client or an expert or a party in the case?

23 A Correct.

24 Q Under the heading Author there's a  
25 line that says, "Author created text compilation

1 E. White

2 editing."

3 Do you see that?

4 A Yes.

5 Q What is that a reference to?

6 A I think that the firm created the  
7 whole thing.

8 Q So the reference to text is that  
9 the firm prepared the text of the document?

10 A Correct.

11 Q What's the reference compilation?

12 A Well, there were also exhibits, and  
13 I can't remember if it's as registered the  
14 exhibits were attached but there -- some of the  
15 exhibits that were attached were not drafted by  
16 the firm, they were compiled into the document.

17 Q And so your assertion of copyright  
18 doesn't include any of the exhibits, it merely  
19 would cover whatever compilation copyright there  
20 might be in picking exhibits written by other  
21 people?

22 MR. BLUE: Objection.

23 A I mean, generally speaking, I think  
24 that's correct.

25 Q And what is the reference to

1 E. White

2 MR. BLUE: Objection.

3 A I think -- I think that's more  
4 accurate.

5 Q And you don't have any written  
6 agreement with Dr. High governing ownership of  
7 copyrights in work product that he contributed  
8 to in connection with that case, do you?

9 A I don't believe so.

10 Q And Dr. High did in fact contribute  
11 to the drafting of plaintiffs' combined motion  
12 for summary judgment?

13 A I'm sure he saw it and I'm sure he  
14 said things about it, but whether he contributed  
15 to drafting I couldn't say as I sit here today.

16 Q He provided you with written  
17 comments on your draft?

18 A Yes.

19 Q Made editorial suggestions?

20 A Yes.

21 MR. MARKS: I'd like to mark as  
22 White Exhibit 6, a two-page document  
23 bearing the Bates number P00054 to 55.

24 (Document, Bates stamped P00054 to  
25 55 was marked as White Exhibit No.

1 E. White

2 6 for identification, as of this  
3 date.)

4 Q Mr. White, have you seen White  
5 Exhibit 6 before?

6 A Yes.

7 Q What is White Exhibit 6?

8 A A certificate of registration for  
9 plaintiffs' motion in limine.

10 Q And this is a motion in limine  
11 filed on behalf of the plaintiffs in the Beer  
12 versus XTO Holdings case?

13 A Right.

14 Q And was this motion filed on behalf  
15 of just Miss Beer and Miss Bique or was this  
16 filed on behalf of the class?

17 A Class.

18 Q And is the reference next to the  
19 line date of first publication, is that the date  
20 that this motion in limine was filed with the  
21 court?

22 A Yes, I believe it was.

23 Q And in addition to filing this  
24 document with the court, did you mail a copy of  
25 it to your clients?

1 E. White

2 A I'm not sure we mailed the motion  
3 in limine. I would have discussed it with them.

4 Q And did you provide a copy of the  
5 motion to the experts in the case?

6 A I doubt it.

7 Q Are you aware of any distribution  
8 of the motion in limine by you or anyone acting  
9 on behalf of the firm to anyone other than  
10 filing of the court?

11 A No.

12 Q And that's true not only at the  
13 time it was filed but subsequently until  
14 discovery in this case, correct?

15 A I provided it to counsel, but yes.

16 Q Counsel in this case in connection  
17 with this litigation?

18 A Correct.

19 Q And that's true of the -- the  
20 motion for summary judgment as well, but there  
21 was -- I asked you a series of questions about  
22 whether or not it had been distributed by you or  
23 on your behalf and I believed I was asking about  
24 at any point in time, but I'd like to make sure  
25 that that's how you understood the question?

1 E. White

2 A Well, yes, that's how I think I  
3 understood the question and I don't believe  
4 there's been any distribution other than in the  
5 case or to counsel.

6 Q And on White Exhibit 6 there is a  
7 reference to it being a work made for hire.

8 Do you see that?

9 A Yes.

10 Q And is that the same designation as  
11 work made for hire for the same reasons as we  
12 discussed in relation to White Exhibit 5?

13 A Yes.

14 Q That it was prepared by an employee  
15 of Edward L. White, P.C. within the scope of his  
16 employment?

17 A It was prepared for Edward L.  
18 White, P.C., yes.

19 Q And did Dr. High contribute to the  
20 motion in limine?

21 A I don't believe so. If he did it  
22 would have been editorial comments.

23 Q There's a limitation of the  
24 copyright claim and it says "Materials from this  
25 claim, text from other sources."

1 E. White

2 Do you see that?

3 A Yes.

4 Q And what's that a reference to?

5 A I think we included that in all of  
6 these and -- I don't recall specifically in this  
7 instance.

8 Q You did not include a similar  
9 limitation in your registration of White Exhibit  
10 5, correct?

11 A Looks like we didn't.

12 Q Even though White Exhibit 5 you  
13 believe included exhibits that were prepared by  
14 third parties, correct?

15 A I believe so, yes.

16 Q Sitting here today would you agree  
17 it would have been appropriate to include a  
18 limitation on the copyright claims that you were  
19 claiming in the copyright and the individual  
20 exhibits that were attached and prepared by the  
21 third parties?

22 MR. BLUE: Objection.

23 A I'd have to go back and look at it,  
24 but it's possible that that limitation, but I  
25 don't think to the extent I would have claimed a

1 E. White

2 those were accurate.

3 Q Did your clients review the draft  
4 of the brief?

5 A Yes, I feel confident they did.  
6 It's the normal practice in this kind of  
7 situation.

8 Q It's a normal practice that they  
9 would provide comments on the brief?

10 A Sometimes the comments would simply  
11 be, "it looks like," but yes, they would  
12 typically say something.

13 Q Did you have any assistance in the  
14 case research in connection with this motion?

15 A I would expect that Marty would  
16 have helped at least in terms of making his  
17 editorial comments, but I don't recall  
18 specifically.

19 Q You don't recall whether or not you  
20 had any clerks or other research assistants  
21 working on this with you?

22 A I don't believe so at this time.

23 Q Does Dr. High ever utilize research  
24 assistants or clerks to help him in the  
25 performance of his work in connection with his



1 E. White

2 relationship with you?

3 A I don't believe so.

4 Q Why was this document prepared?

5 A The document was prepared in order  
6 to attempt to secure summary judgment for the  
7 named plaintiffs.

8 Q Is there any other reason that you  
9 prepared this document?

10 A Well, they also -- it's in my  
11 strategy of the litigation, but --

12 MR. BLUE: I just want to avoid a  
13 situation where --

14 Q I'm not trying to intrude on work  
15 product or privilege. My question is, was there  
16 any reason that you prepared this document other  
17 in connection with your advocacy on behalf of  
18 your clients in the Beer versus XTO Energy case?

19 A No, essentially that was it.

20 Q You qualified with essentially. Is  
21 there any reason unrelated to your  
22 representation of these clients that you  
23 prepared this document?

24 A None that I can think of.

25 Q And at the time that you prepared

1 E. White

2 the document you anticipated that you would be  
3 filing it with the court on behalf of your  
4 clients, correct?

5 A Correct.

6 Q And you filed the summary judgment  
7 motion with the court because you wanted the  
8 court to consider it and grant the motion,  
9 correct?

10 A That was the primary reason, yes.

11 Q What are the ancillary reasons that  
12 you filed with the court?

13 MR. BLUE: Can we also --

14 MR. MARKS: Without --

15 MR. BLUE: -- say it's the same  
16 caveat, you're not talking about  
17 litigation strategy or how he advised  
18 the clients how to proceed.

19 Q If it relates to litigation  
20 strategy, I will accept that that's the reason.  
21 You don't have to give me the particulars of the  
22 litigation strategy.

23 A Litigation strategy.

24 Q No reason unrelated to prosecution  
25 of a litigation?

1 E. White

2 A Correct.

3 Q And you knew at the time it was  
4 prepared that it would be available on Pacer,  
5 correct?

6 A Yes.

7 Q For anyone with a Pacer  
8 subscription to download?

9 A I think you have to have a  
10 subscription but I knew it would be on Pacer.

11 Q And that anyone, any member of the  
12 public who wanted to obtain it from Pacer would  
13 be able to obtain it?

14 A Assuming they had the subscription.

15 Q Are you aware of any restrictions  
16 on who can obtain a Pacer subscription?

17 A I don't know there's requirements.

18 Q And you also knew that a copy of  
19 the brief would be available from the courthouse  
20 itself, correct?

21 A Yes.

22 Q And that any member of the public  
23 who went in and complied with whatever terms the  
24 Western District of Oklahoma has set up for  
25 copying briefs could go in and may a copy,

1 E. White

2 right?

3 A Yes.

4 Q And did the possibility that  
5 somebody might make a copy of your brief from  
6 Pacer and distribute your brief affect your  
7 decision to write this motion?

8 A If I had prior knowledge of that  
9 fact, I still would have written the motion, if  
10 that's what you're asking me.

11 Q That is what I'm asking you. The  
12 answer is yes?

13 A Yes.

14 Q And did the possibility that  
15 someone might make a copy of your brief in Pacer  
16 and distribute your brief affect the quality of  
17 your work on this motion?

18 A No.

19 Q And at the time you prepared the  
20 motion, you had no way of knowing whether West  
21 or Lexis would include a copy of it in a  
22 database, correct?

23 A Correct.

24 Q Subsequent to your filing of this  
25 document with the court, and until, until this

1 E. White

2 case was commenced, has anyone ever requested a  
3 copy of this document from you?

4 A Well, that gets into -- there --  
5 there's another counsel involved with this case,  
6 so that, a copy was certainly provided to them.

7 Q When you say this case, I want to  
8 make sure --

9 A Beer.

10 Q Beer v. XTO, okay. And who is  
11 that?

12 A The Helms Underwood is the firm,  
13 Helms Underwood Cook.

14 Q And you provided a copy of this  
15 brief to that firm?

16 A Say you, Edward L. White, P.C., I  
17 believe Jan would have -- may have provided a  
18 copy to them.

19 Q And that was in connection with  
20 their representation of members of your original  
21 class?

22 A Yes.

23 Q And the reason that a copy was  
24 provided was to -- was because they had assumed  
25 representing members of a class that you had at

1 E. White

2 one point represented?

3 A Correct.

4 Q And that's the only reason that you  
5 provided a copy of the brief to them?

6 A Yes.

7 Q And to your knowledge that's the  
8 only reason they requested a copy of the brief  
9 was to assume the representation of the  
10 individuals you had previously represented?

11 A Yes.

12 Q Have you ever offered to license  
13 the copyright you claim in this work to anybody  
14 else?

15 A No.

16 Q Has anyone ever asked you for such  
17 a license?

18 A No.

19 MR. MARKS: I'd like to mark as  
20 White Exhibit 8 a document bearing Bates  
21 number P0001 through P00024.

22 (Motion in Limine was marked as  
23 White Exhibit No. 8 for  
24 identification, as of this date.)

25 Q Mr. White, what is White Exhibit 8?

1 E. White

2 A It's plaintiffs' motion in limine  
3 in Beer versus XTO.

4 Q Can you describe for the process of  
5 how this document was prepared?

6 A Generally speaking, it was prepared  
7 by me addressing the issues that I felt needed a  
8 motion in limine filed on and gathering the  
9 relevant background information and legal  
10 authority and drafting a brief.

11 Q And you believe that Dr. High  
12 provided editorial comment on this brief?

13 A I believe he probably did on this  
14 one.

15 Q And did Miss Inman play a similar  
16 role with respect to White Exhibit 8 as she did  
17 in White Exhibit 7 with regard to formatting the  
18 document and providing the cover sheet and the  
19 certificate of service, et cetera?

20 A Yes.

21 Q Were there any other contributors  
22 to the preparation of the motion?

23 A To the extent we talked to clients  
24 about it that may have had comments, it's  
25 possible.

1 E. White

2 Q Did anyone, to your knowledge,  
3 other than you and Dr. High perform any of the  
4 case research associated with the preparation of  
5 this motion?

6 A I'm sorry, what was that?

7 Q I'm asking who did the case  
8 research in connection with the preparation of  
9 the motion?

10 A It would have been me, and then to  
11 the extent he was providing editorial comments,  
12 there may have been work by Dr. High.

13 Q And this document was prepared on  
14 behalf of the class in Beer v. XTO Energy in  
15 order to persuade the court to exclude certain  
16 evidence from trial in this action?

17 A Essentially. I mean you know what  
18 a motion in limine is, but yes.

19 Q Was there any other reason that you  
20 prepared this document other than for the  
21 purpose of representing your clients in the Beer  
22 v. XTO Energy case?

23 A No.

24 Q And at the time the document was  
25 prepared you anticipated that it would be filed



1 E. White

2 with the court, correct?

3 A Yes.

4 Q And you knew at the time it was  
5 prepared that once filed it would be available  
6 on Pacer?

7 A Yes.

8 Q And you knew at the time it was  
9 prepared that once filed it would be available  
10 for copying at the courthouse?

11 A Yes.

12 Q And the possibility that somebody  
13 might copy and distribute your brief did not  
14 affect your decision to write this motion, did  
15 it?

16 A Correct.

17 Q And the possibility that someone  
18 may copy and distribute your brief did not  
19 affect the quality of your work on this motion,  
20 did it?

21 A No.

22 Q At the time you prepared this  
23 motion you had no way of knowing whether West or  
24 Lexis would include a copy of it in a database,  
25 correct?

1 E. White

2 A Right.

3 Q And have you ever offered to  
4 license the copyright you claim in this work to  
5 anyone else?

6 A No.

7 Q Has anyone ever asked you for such  
8 a license?

9 A No.

10 Q And has anyone ever asked you for  
11 such a license?

12 A No.

13 Q Has anyone every asked you for a  
14 license to your copyright in any of your  
15 registered copyrights?

16 A You're asking me if on the ones  
17 that were filed on behalf of the firm, not my  
18 clients.

19 Q Correct, not your clients. Thank  
20 you for the clarification.

21 With regard to the documents for  
22 which you secured a copyright registration, I'm  
23 asking has anybody ever attempted to license  
24 your copyright in any of those Works?

25 A No one has ever expressly asked me

1 E. White

2 for a license to an Edward L. White, P.C.  
3 registered work, no.

4 Q Have you ever offered a license to  
5 the copyright in any Edward L., P.C. registered  
6 work?

7 A No.

8 Q You brought Beer v. XTO Energy as a  
9 putative class action, correct?

10 A Yes.

11 Q And with Miss Beer and Miss Bique  
12 as the name plaintiffs, correct?

13 A Correct.

14 Q And on or about March 20, 2009, the  
15 court granted your motion for class  
16 certification, correct?

17 A I think the date's right.

18 Q You were appointed counsel for the  
19 class?

20 A Yes.

21 Q And Miss Beer and Miss Bique were  
22 appointed as representatives of the class?

23 A Correct.

24 Q On May, I think we've already  
25 talked about that on May 20, 2009 you filed a

1 E. White

2 motion for summary judgment on behalf of Miss  
3 Beer and Miss Bique?

4 A I believe that's right.

5 Q That's White Exhibit 7?

6 A Yes.

7 Q And your motion was limited to the  
8 individual claims of the named plaintiffs and  
9 did not cover the claims to the class, correct?

10 A Correct.

11 Q And on or about February 5, 2010,  
12 the court granted summary judgment to Miss Beer  
13 and Miss Bique on their individual claims,  
14 correct?

15 A I believe that's right.

16 Q And shortly before the court award  
17 summary judgment to Miss Beer and Miss Bique,  
18 you filed a second motion for summary judgment  
19 on the issue of class damages, correct?

20 A Yes. I think again the timing  
21 sounds right.

22 MR. MARKS: I'm going to mark as  
23 White Exhibit 9 a copy of the docket in  
24 Beer versus XTO Energy. I don't mean to  
25 make this a memory test on dates so let

1 E. White

2 me provide you with a copy of the docket  
3 and you can confirm for me whether or  
4 not anything, as we go through the  
5 sequencing is inaccurate to the best of  
6 your recollection.

7 (Beers v. XTO Energy court docket  
8 was marked as White Exhibit No. 9  
9 for identification, as of this  
10 date.)

11 Q So if you turn to the portion of  
12 the document which is where the entries are  
13 organized chronologically, that has us in the  
14 spring of 2010, I think on page 20 of the  
15 document we've got the -- excuse me, on page 19  
16 of the document there's an entry, entry 148  
17 reflects that on February 5th the court granted  
18 the plaintiffs' motion for summary judgment with  
19 respect to their individual claims?

20 A Yes.

21 Q And if you look up ahead at docket  
22 entry 144, on February 2nd you filed a motion  
23 for summary judgment on damages for all  
24 plaintiffs, correct?

25 A Yes.

1 E. White

2 Q And the court denied the second  
3 summary judgment motion for damages on behalf of  
4 all plaintiffs as premature as there had been no  
5 determination for liability for the class,  
6 correct?

7 A The court's order reflects what the  
8 court did. I think it was a little more  
9 complicated.

10 Q You would agree with me that the  
11 court denied motion for summary judgment on  
12 damages to the class?

13 A Yes.

14 Q And on April 13, 2010 the court  
15 decertified the class, correct?

16 A Yes.

17 Q And the court found that you were  
18 not adequately protecting absent class members,  
19 correct?

20 A Again, the court's order says what  
21 it says.

22 Q And the court's order said that --  
23 reflected its determination that you were not  
24 adequately representing the class, correct?

25 MR. BLUE: Objection.

1 E. White

2 A It said what it said.

3 Q As a result of that order you were  
4 removed as counsel for the class, correct?

5 A Yes.

6 Q And the court also found that Miss  
7 Beer and Miss Bique were no longer adequate  
8 representatives of the absent class?

9 A Yes, I believe that's correct.

10 Q And at the end of April 2010,  
11 Mr. Goodard and Mr. Fenkhauser (phonetic) filed  
12 a motion to intervene as names plaintiffs with  
13 new counsel, correct?

14 A Goddard, yes.

15 Q Excuse me, Goddard, thank you.

16 And after the court's  
17 determination that you were no longer adequate  
18 class counsel, you wrote to members of the  
19 absent class and offered to represent them  
20 individually, correct?

21 A I'm not sure the sequencing is  
22 exactly correct but I did -- there was certainly  
23 communications.

24 Q Communications between you and  
25 members of the class following the court's

1 E. White

2 decertification of the class, correct?

3 A Well, there's no class following  
4 decertification.

5 Q Members of the -- members of the  
6 formerly certified class?

7 A Yes.

8 Q And in those communications you  
9 offered to represent those parties individually  
10 in continuing litigation against XTO Energy,  
11 correct?

12 A Again, the letters speak for  
13 themselves, but yes, essentially that's correct.

14 Q You wanted to stay involved as  
15 counsel for those parties, correct?

16 A Yes.

17 Q And by May 15, 2010, you had filed  
18 copyright registrations for 15 of the court  
19 filings and discovery documents that you had  
20 prepared while acting as counsel for the  
21 formerly certified class?

22 A I think the dates are right, yeah.

23 Q And you wanted to prevent new  
24 counsel from copying the work product you had  
25 done on behalf of the class, correct?



1 E. White

2 A I wanted to protect my intellectual  
3 property, if that's what you're asking me.

4 Q And the concern that you had was  
5 that other lawyers who were seeking to act on  
6 behalf of the same individuals you were seeking  
7 to represent would use your work product in  
8 their own efforts to represent those same  
9 individuals?

10 MR. BLUE: Objection.

11 Go ahead.

12 A That was certainly a concern.

13 Q What other concern did you have?

14 A Well, again, it's -- I think that  
15 the best way to say it was I was seeking to  
16 protect my intellectual property and that was a  
17 significant concern.

18 Q What else motivated the timing of  
19 registering 15 documents in the case other than  
20 the fact that you had been removed as counsel  
21 for the class, there was a motion to intervene  
22 with new class counsel, and you were seeking to  
23 represent those same individuals in their  
24 individual capacity?

25 A Well, part of it was I didn't have

1 E. White

2 a trial that I had expected to have and so I had  
3 more time. But your assertion that that was  
4 copying by subsequent counsel was a concern is  
5 accurate.

6 Q And what I'm trying to understand  
7 is were there any other concerns motivating the  
8 last 15 copyright registrations that you've made  
9 in your career on behalf of your firm?

10 MR. BLUE: Objection, asked and  
11 answered?

12 A Yes.

13 Q And what were they?

14 A A desire to protect my intellectual  
15 property.

16 VIDEOGRAPHER: Excuse me, Counsel,  
17 we're coming down to seconds.

18 MR. MARKS: That's fine. Why don't  
19 we go ahead and change now.

20 VIDEOGRAPHER: The time is 11:53  
21 and we're off the record.

22 (Whereupon, at 11:53 a.m., a recess  
23 was taken to 11:59 a.m.)

24 (The deposition resumed with all  
25 parties present.)

1 E. White

2 VIDEOGRAPHER: The time is 11:59  
3 and this begins tape two of the  
4 videotaped deposition of Edward L.  
5 White.

6 Q In July of 2010, Mr. White, the  
7 court in Beer v. XTO -- XTO Energy granted the  
8 motion to intervene, correct?

9 A Yes.

10 Q And you were directed to deliver  
11 all discovery materials to intervener's counsel,  
12 right?

13 A Correct.

14 Q And after the court learned about  
15 your outreach to members of the decertified  
16 class concerning potential individual  
17 representations, the court enjoined you and  
18 Dr. High from any future correspondence with  
19 class members, correct?

20 A The court entered an order that was  
21 to some extent consistent with what you said.

22 Q How was it inconsistent with what I  
23 said?

24 A You can read the order.

25 Q Sitting here today can you identify

1 E. White

2 anything about my statement's that inaccurate?

3 A I don't have the order in front of  
4 me.

5 Q But I agree with you, the order  
6 says what it says but you can't identify  
7 anything incorrect in my statement sitting here  
8 today?

9 MR. BLUE: Objection.

10 A Nothing specific.

11 Q And you don't dispute that the  
12 court enjoined you and Dr. High from future  
13 correspondence with members of the class that  
14 had been certified with you as class counsel?

15 A Again, I have to look at exactly  
16 what the court order said, but that was the  
17 tenor of the order.

18 Q And the new named plaintiff's who  
19 intervened in the case filed a class  
20 certification motion in August 2010, correct?

21 A I believe so.

22 Q And earlier the court certified the  
23 class with new class counsel and new  
24 representative plaintiffs, correct?

25 A Yes.

1 E. White

2 Q And earlier this year the case  
3 settled right before trial?

4 A Yes, it did.

5 Q And class counsel in that case has  
6 submitted a fee request of more than \$18  
7 million, correct?

8 A Correct.

9 Q And you have filed a motion asking  
10 the court to award you a portion of the attorney  
11 fee award and to reimburse your firm for  
12 specific litigation expenses, correct?

13 A Yes.

14 MR. MARKS: I'd like to mark as  
15 White Exhibit 10, a document bearing the  
16 title "Motion in Support of Class  
17 Counsel's Fee Request and Request for  
18 Separate Allocation of Fees to White and  
19 to Prior Class Representatives."

20 (Motion in Support of Class  
21 Counsel's Fee Request and Request  
22 for Separate Allocation of Fees to  
23 White and to Prior Class  
24 Representatives was marked as White  
25 Exhibit No. 10 for identification,

1 E. White

2 Q And have you used West Law to  
3 access a court filing prepared by another  
4 attorney?

5 A Again, it -- it's possible, but I  
6 don't believe so. I don't think that back when  
7 I had West Law I was aware of that as an option.

8 Q Has anyone ever accessed an  
9 attorney authored court filing via West Law on  
10 your behalf?

11 A No.

12 Q Has anyone ever used Lexis to  
13 access a court filing prepared by another  
14 attorney on your behalf?

15 MR. BLUE: Objection, vague.

16 A No, I don't believe so.

17 Q When did you first become aware  
18 that a document prepared by your firm was  
19 available on West Law?

20 A Sometime after I became aware of  
21 course that they were offered, but I don't -- I  
22 can't tell you when exactly.

23 Q How did you become aware of it?

24 A I -- honestly I can't tell you.

25 Q You don't remember?

1 E. White

2 A No.

3 Q How did you become aware that a  
4 document prepared by Edward L. White, P.C. was  
5 available on Lexis?

6 A I think, and I don't know if this  
7 is true in fact, my assumption was once I  
8 figured out that briefs were available that I  
9 had assumed that basically all federal briefs  
10 were available, that there was some sort of  
11 program to pull those off and kind of in an  
12 automated fashion index and process.

13 Q Do you understand sitting here  
14 today whether or not that's the case?

15 A I don't know if that's the case.

16 Q Did you ever search Lexis for a  
17 copy of a brief or other court filing prepared  
18 by your firm?

19 A I believe I did.

20 Q And were you able to locate any?

21 A I believe I was, yeah.

22 Q Which documents were you able to  
23 identify?

24 A I believe some of the Beer  
25 documents, one or more of the beer documents.

1 E. White

2 Q And when did you conduct that  
3 search?

4 A I don't know. After they were  
5 registered in 2010, but I don't know when.

6 Q Certainly within the last year or  
7 two which is the time frame in which you've  
8 indicated you first became aware that Lexis made  
9 briefs available, correct?

10 A Correct.

11 Q And have you ever conducted a  
12 search for your own materials on West Law?

13 A No.

14 Q Has anyone ever done that on your  
15 behalf?

16 A It's possible, I don't know.

17 Q Sitting here today, you're not  
18 aware of anybody having searched West Law for  
19 copies of your briefs or other court filings on  
20 West Law?

21 A Correct.

22 Q When was the last time that you  
23 used Lexis to access one of your own documents?

24 A I don't know.

25 Q Within the past year?



1 E. White

2 A I don't know.

3 Q Since the case was filed?

4 A I don't know.

5 Q Do you know whether or not any  
6 documents prepared by Edward L. White, P.C. are  
7 currently available on Lexis?

8 A No, I don't know.

9 Q Do you know whether any documents  
10 prepared by Edward L. White, P.C. are currently  
11 available on West Law?

12 A No, I don't know.

13 Q Do you have any understanding of  
14 the time period for which any particular  
15 document authored by your firm was available on  
16 West Law?

17 MR. BLUE: I'm sorry, just for  
18 clarification, dates during which it was  
19 available.

20 Q Yeah, the time period, for how long  
21 it was available.

22 A I don't know.

23 Q Same answer as to Lexis?

24 A Correct.

25 Q The amended complained in this

1 E. White

2 action places two Works at issue in this  
3 copyright infringement action, correct.

4 A I don't know that that's accurate.

5 Q Do you believe that more Works are  
6 at issue than two?

7 A Well, paragraphs 4 and -- paragraph  
8 4 talks about two particular Works, but then the  
9 exhibit we looked at has more Works referenced,  
10 so I don't know when you say places then at  
11 issue, I'm not sure what that means.

12 Q As the plaintiff in this case, do  
13 you believe that you're seeking relief on behalf  
14 of injunctive relief or damages with -- let me  
15 break that apart. Are you seeking damages from  
16 West Law and Lexis for infringements of Works  
17 other than the motion in limine or the motion  
18 for summary judgment?

19 MR. BLUE: Objection. We made that  
20 clear in the documents.

21 MR. MARKS: You're referring to  
22 your representation that it's only two  
23 Works at issue?

24 MR. BLUE: Yes.

25 MR. MARKS: Well, I will accept

1 E. White

2 your representation on the record here  
3 that the only two Works at issue are the  
4 motion in limine that's been marked as  
5 White Exhibit 8 and the motion for  
6 summary judgment that's been marked as  
7 White Exhibit 7?

8 MR. BLUE: Correct, for purposes of  
9 this litigation, reserving rights with  
10 respect to everything else, currently at  
11 issue are those two writings.

12 Q And my question for you, Mr. White,  
13 is turning to White Exhibit 7, how did you  
14 become aware that plaintiffs' combined motion  
15 for summary judgment in the Beer v. XTO Energy  
16 case was available on West Law?

17 A As I said to you, my assumption was  
18 that when I found out they had this brief bank,  
19 whatever you want to call it, that all federal  
20 filings were on there. So I didn't become -- I  
21 don't recall a specifically becoming aware that  
22 that pleading was on there. My belief was that  
23 all federal pleadings were on there.

24 Q Do you have any reason to believe  
25 that this document was ever made available on

1 E. White

2 West Law other than your belief that all federal  
3 pleadings were made available on West Law?

4 MR. BLUE: Objection.

5 A I'm not sure exactly what you're  
6 asking but I had, I think, my testimony is I had  
7 a belief that all pleadings were available.

8 Q I will represent to you that your  
9 belief is incorrect.

10 A All right.

11 Q Okay. And I'm asking whether  
12 there's any other basis for your belief that  
13 this document that's been marked as White  
14 Exhibit 7 was ever available on West Law other  
15 than your belief that West Law was making all  
16 federal pleadings available?

17 A Other than as a part of this  
18 litigation information that's been produced, I  
19 didn't have an independent...

20 MR. BLUE: And let me just  
21 interject to object to the extent your  
22 question includes a request for  
23 conversations between Mr. White and his  
24 counsel concerning this litigation.

25 MR. MARKS: I'm not asking for the

1 E. White

2 A Same answer.

3 Q The answer is no, you don't have  
4 any knowledge?

5 MR. BLUE: Objection.

6 A My answer was that I don't have a  
7 specific recollection of having done a search  
8 but my -- I may have more likely on Lexis done a  
9 search because I had that service, but my belief  
10 was that they were all available.

11 Q And you didn't -- you don't have  
12 any recollection sitting here today of searching  
13 for this document on Lexis or West Law?

14 A No.

15 Q Okay. With respect to the  
16 plaintiff's motion in limine that's been marked  
17 as White Exhibit 8, you don't -- other than  
18 conversations, excluding whatever conversations  
19 you may have had with counsel, you don't have  
20 any basis to no one way or the other whether  
21 plaintiff's motion in limine was ever made  
22 available on West Law?

23 MR. BLUE: Objection.

24 A My answers with respect to this  
25 document would be the same as with respect to

1 E. White

2 others.

3 Q You don't have specific knowledge  
4 of this document ever appearing on West Law and  
5 you don't have specific knowledge of this  
6 document ever appearing on Lexis, correct?

7 MR. BLUE: Objection.

8 A Correct, other than as previously  
9 discussed.

10 Q Other than a belief that West Law  
11 and Lexis were making all federal filings  
12 available, correct, and conversations with  
13 counsel?

14 A Again, as previously discussed,  
15 yes.

16 Q Are you aware of any instance in  
17 which another attorney has copied the  
18 expressions set forth in White Exhibit 8?

19 A No.

20 Q Are you aware of any instance in  
21 which another attorney has used the expressions  
22 set forth in White Exhibit 7?

23 MR. BLUE: Objection.

24 A No.

25 Q Prior to filing this lawsuit, did

1 E. White

2 you ever ask West Law to remove materials  
3 written by Edward L. White, P.C. from its  
4 database?

5 A No.

6 Q Prior to filing this lawsuit, did  
7 you have any communications with West Law about  
8 not putting any of your materials into the  
9 database in the first place?

10 A No.

11 Q Did you ever have any communication  
12 at any time with anyone at West about the  
13 availability of your materials in its database?

14 A I don't believe so.

15 Q Has anyone ever told you that a  
16 request from West to remove your materials from  
17 its database would be futile?

18 A Has anyone told me that, no.

19 Q Do you have any reason to believe  
20 that such a request would be futile?

21 A Yes.

22 Q What's the basis for your belief?

23 A Dealing with West in the past.

24 Q What -- what about your dealings  
25 with West in the past makes you believe that

1 E. White

2 requesting that they remove materials from their  
3 database would be futile, absent federal court  
4 litigation?

5 A It's just my general impression  
6 based on prior dealings with West that a request  
7 from one attorney to remove materials would have  
8 been futile.

9 Q And you never made such a request?

10 A Correct.

11 Q And what are the nature of your  
12 dealings that gave you the impression that they  
13 wouldn't entertain a dialogue if you wanted  
14 materials removed from the database?

15 A Less than reasonable behavior from  
16 West previously.

17 Q What is the behavior that you're --  
18 to which you're referring?

19 A I had a dispute about how much  
20 we -- I owed them, the firm owed them upon  
21 termination. And I can't remember if that  
22 contract was specifically with me as an  
23 individual or for the firm, but a dispute  
24 associated with termination of prior West  
25 service.



1 E. White

2 A Less than a year.

3 Q When was your first communication  
4 with Mr. Blue in relation to this action?

5 A Same thing, I don't know.

6 Q Did you retain the Bragar Wexler  
7 firm at the same time that you retained  
8 Mr. Blue?

9 A My expressed dealings have been  
10 with Mr. Blue.

11 Q Have you had any communications  
12 with Mr. Bragar?

13 MR. BLUE: That's a yes or no. I  
14 just don't want you to get into the  
15 substance of communications.

16 Q I'm not asking for the substance,  
17 I'm asking about communication.

18 A I don't believe so.

19 Q How did you come to met Mr. Blue?

20 A Mr. Blue and I discussed a couple  
21 of litigation matters.

22 MR. BLUE: I'm going to object to  
23 the extent that you're asking for the  
24 substance of those discussions.

25 Q And excluding your counsel in this

1 E. White

2 action, have you had conversations with other  
3 attorneys about the availability of briefs on  
4 West Law or Lexis?

5 MR. BLUE: I'll object to the  
6 extent that previous answers have  
7 discussed that.

8 Q You can answer.

9 A I believe I have.

10 Q Who's that?

11 A Couldn't say specifically. Like  
12 most lawyers, I talk to my friends and  
13 colleagues about various legal matters and it  
14 would have been in that context of, you know,  
15 did you realize that this was out there.

16 Q Sitting here today, you can't  
17 recall a specific conversation?

18 A No, I can't recall a specific.

19 Q Has anyone ever told you in words  
20 or in substance that they would writing legal  
21 briefs if they were copied and distributed by  
22 West Law and Lexis without permission?

23 A No.

24 Q Has anyone told you in words or in  
25 substance that the quality of their briefs would

1 E. White

2 diminish if they were copied and distributed by  
3 West Law and Lexis without permission?

4 A No.

5 Q Has anyone ever told you that they  
6 had complained to West Law or Lexis about the  
7 availability of court filings on West Law or  
8 Lexis?

9 A It, you know, it's one of those  
10 deals, I don't have a specific recollection but  
11 I believe that somebody I talked to had  
12 mentioned that they had complained.

13 Q You don't recall who this person  
14 is?

15 A No, I don't.

16 Q Man or a woman?

17 A I believe it was a man, but I've --  
18 I've had quite a few conversations with folks  
19 about this issue so I can't be sure who it was.

20 Q Since the filing of the complaint,  
21 you mean?

22 A Since and before.

23 Q So you've had quite a few  
24 conversations about this issue before you filed  
25 a complaint in this action?

1 E. White

2 MR. BLUE: Objection.

3 A Friends and colleagues, yes.

4 Q But you can't recall a single  
5 conversation?

6 A No.

7 Q Did you memorialize anything about  
8 whether anybody has ever complained to Lexis or  
9 West Law?

10 A No.

11 Q Nobody ever shared with you a copy  
12 of a written complaint?

13 A No.

14 Q Nobody put that in an e-mail, this  
15 was all oral communications if they happened?

16 A They happened, communications about  
17 this issue, but I don't recall any e-mails.

18 Q Turning your attention to the  
19 amended complaint which is still before you I  
20 believe, you authorized the filing of the  
21 amended complaint, correct?

22 A Yes.

23 Q Did you review it for factual  
24 accuracy before it was filed?

25 A Yes.

1 E. White

2 copies of the Works, prepared derivative Works  
3 and distributed copies of the Works, end quote.

4 Could you see that?

5 A Yes.

6 Q What is the basis for your  
7 allegation that West and Lexis have compared  
8 derivative Works?

9 A Well, without limiting this  
10 explicitly to the answer, I mean there's a lot  
11 of legal arguments involved, but I think  
12 certainly taking the Works off of Pacer and  
13 putting them on their database would be one  
14 instance. Sending them via an e-mail to someone  
15 would be another instance.

16 Q That would be a derivative work?

17 A I think it's a derivative work,  
18 yes.

19 Q Okay. So --

20 A It's not a very significant change,  
21 but they indexed them, they put them on the  
22 database, they made them available. I think all  
23 those are derivative Works.

24 Q It's all creation of derivative  
25 Works?

1 E. White

2 A Yes.

3 Q You aren't going to stop being a  
4 lawyer if you lose this case, are you?

5 A I don't expect to.

6 Q You don't expect to stop or you  
7 don't expect to lose?

8 A Either.

9 Q All right. Assume with me that --  
10 but you would agree that if you lost this case  
11 you wouldn't stop being a lawyer, would you?

12 A Correct. Not just because of that.  
13 I mean at some point I will because I'll die or  
14 retire.

15 Q And even if you lose this case you  
16 will continue to represent your clients to the  
17 best of your ability, won't you?

18 A Certainly.

19 Q And win or lose in this case, you  
20 will still file motions when you think it's in  
21 your client's best interest to do so, correct?

22 A Yes.

23 Q And win or lose this case, you will  
24 still respond to motions filed against your  
25 clients in other cases, correct?

1 E. White

2 A Yes.

3 Q Have you suffered any damages from  
4 the available -- availability of the motion to  
5 dismiss -- excuse me, the motion for summary  
6 judgment and the motion in limine on West Law?

7 MR. BLUE: Objection.

8 A Any actual damages?

9 Q Yes, any actual damages?

10 A Again, we talked early on about  
11 some -- some -- some of the perceived damage  
12 that I see that's difficult to calculate, but  
13 yes, I think I have and I think it's also  
14 reduced the value of my practice to the extent  
15 that the available -- availability of those  
16 Works makes it easier for someone else to  
17 undertake oil and gas litigation and  
18 specifically kind of roll up the litigation like  
19 those two briefs related to.

20 Q And do you have any knowledge about  
21 another attorney accessing your motion for  
22 summary judgment through West Law or Lexis?

23 A Other than as it relates to  
24 information I learned in this litigation, no.

25 Q And do you have any knowledge or

1 E. White

2 awareness of another attorney accessing your  
3 briefs through West Law or Lexis in order to  
4 provide services in competition with you?

5 A No, but I believe that happens.

6 Q What is the basis for your belief?

7 A Why does West and Lexis sell the  
8 briefs other than for use by counsel and use by  
9 counsel is to some extent by definition  
10 competition and so it's facilitating more  
11 effective competition with me.

12 Q And do you have any understanding  
13 of how many people have accessed your motion for  
14 summary judgment through Pacer?

15 A I don't.

16 Q Do you have any understanding of  
17 how many attorneys have accessed your motion in  
18 limine through Pacer?

19 A No.

20 Q Do you have any understanding of  
21 how many attorneys have made copies of either  
22 your motion for summary judgment or your motion  
23 in limine at the courthouse?

24 A No.

25 Q So you have no idea whether or not



1 E. White

2 the percentage of attorneys who might have  
3 accessed either of those Works through West Law  
4 or Lexis is tiny as a percentage of the people  
5 who have obtained copies of those documents  
6 through Pacer or from the court itself?

7 A I don't know what fraction of  
8 people that have accessed those Works have done  
9 so through Lexis or West Law versus Pacer, if  
10 that's your question.

11 Q And if somebody wanted to see those  
12 briefs so that they could compete more  
13 effectively with you, they could go get a copy  
14 from Pacer, couldn't they?

15 A If they specifically knew about the  
16 case at issue and knew that they wanted those  
17 specific briefs, but it's, you know, not part of  
18 my complaint in this case is that it's the  
19 systematic way and you know, the text search  
20 ability and the ability to pull up a whole set  
21 of briefs on an issue is what undercuts my  
22 ability to practice. It's not just that one  
23 brief's available if you know that case and you  
24 know you want that brief, which has always been  
25 the case, but it's that there's a systematic way

1 E. White

2 that someone can have access, use, and basically  
3 have a whole roadmap for a case based on briefs  
4 on file.

5 Q And can you identify a single  
6 client represent -- client representation that  
7 you have lost because of the availability of one  
8 of your Works on West Law or Lexis?

9 A I can't imagine someone coming to  
10 me and saying I would have hired you but I went  
11 to Joe Smith because he told me he could get  
12 these briefs off Lexis. It's never happened but  
13 I can't imagine how it would.

14 Q And are you aware of any case that  
15 you have lost in part because your litigation  
16 adversaries had access to briefs that you had  
17 filed in the past?

18 A Again, I can't imagine that  
19 specifically coming up but it certainly is, and  
20 I didn't mention that fact before, but that, the  
21 access of adversaries to briefs in an easy  
22 fashion that involve Edward L., you know, Ed  
23 White, is another way in which I could have been  
24 harmed by the --

25 Q The fact that a litigation

1 E. White

2 adversary could have used West Law or Lexis to  
3 obtain copies of briefs you have filed in the  
4 past?

5 A Correct.

6 Q And your litigation adversaries  
7 know who you are presumably, right?

8 A Presumably.

9 Q So they could go to the courthouse  
10 and get copies of your briefs and filings,  
11 couldn't they?

12 A Again, not as in a simple of  
13 fashion, but yes.

14 Q So it's easier for them to get it  
15 through West Law and Lexis, but they could get  
16 it through publicly available records at the  
17 courthouse or on Pacer, correct?

18 A Yes.

19 Q You have also alleged that you have  
20 suffered irreparable injury from the  
21 availability of the motion for summary judgment  
22 and the motion in limine on West Law?

23 A I think we allege that, yes.

24 Q And is the irreparable injury any  
25 different from what you've described? Is that a

1 E. White

2 different kind of harm or just a different way  
3 of describing the same problem from your  
4 perspective?

5 A I think it's a different way of  
6 describing the same problem.

7 Q And the same question as to Lexis,  
8 have you suffered any irreparable injury from  
9 the availability of the motion for summary  
10 judgment and the motion in limine on Lexis other  
11 than what you've just described?

12 A I don't think so.

13 Q Turning your attention to paragraph  
14 32. It's an allegation that says, quote, Unless  
15 enjoined from doing so, the defendants'  
16 continued commercial use of the Works will cause  
17 plaintiff irreparable harm by depriving it of  
18 both the right to control the reproduction and  
19 distribution of copyrighted Works and to receive  
20 revenue from those Works, end quote.

21 Do you see that?

22 A Yes.

23 Q How are you being deprived of the  
24 right to receive revenues from the motion in  
25 limine and the motion for summary judgment?

1 E. White

2 A I think to the extent the copies of  
3 my -- copies of derivative Works and the like  
4 are created from my Works without payment and  
5 without authorization I've been harmed.

6 Q Is the only loss of revenues to  
7 which you're referring the fact that you're not  
8 being paid a fee by West Law or Lexis?

9 A No, I think I've described other  
10 harms.

11 Q But I'm -- I'm referring  
12 specifically to your allegation you are being  
13 deprived of your right to receive revenues from  
14 the motion for summary judgment and the motion  
15 in limine, and I'm trying to understand how  
16 you're being deprived of the right to receive  
17 revenues from those Works?

18 A I think it says we've derive, or as  
19 I've discussed earlier, and then also in  
20 addition specifically, as you kind of hinted at,  
21 specific use based or access based or copy based  
22 fees associated with reproduction or creation of  
23 derivative Works.

24 Q You don't get any compensation from  
25 Pacer when somebody uses Pace to make a copy of

1 E. White

2 the motion for summary judgment or motion in  
3 limine, do you?

4 A I don't.

5 Q You don't get compensated by the  
6 federal court system when somebody goes to the  
7 courthouse and makes a copy of your motion for  
8 summary judgment or your motion in limine, do  
9 you?

10 A I don't.

11 Q Are you being damaged by the  
12 availability of your Works to the public through  
13 Pacer?

14 MR. BLUE: Objection to the extent  
15 it calls for a legal conclusion.

16 Q I'm asking for a factual -- I'm  
17 asking a factual question. Are you being  
18 damaged by the availability of your court  
19 filings to the public through Pacer?

20 A I don't know if I'd say it exactly  
21 that way. I think that the value of my  
22 intellectual property would be slightly higher  
23 if it were not available on Pacer. I suspect  
24 that. But as part of being a part of the Pacer  
25 system you have to submit Works to be a part of

1 E. White

2 the Pacer system.

3 Q And that's true for court filings,  
4 right, too, when you make a public court filing  
5 the public has access to it, right?

6 A Correct.

7 Q Are you damaged by the availability  
8 at the courthouse of copies of your public  
9 filings?

10 A I suppose to a limited extent, yes,  
11 the same extent, but part of the system.

12 Q And you're being irreparably  
13 injured by the fact that the court makes your  
14 documents available to the public, right?

15 MR. BLUE: Objection.

16 A I don't know if I'd say it that  
17 way.

18 Q Would you say you're being  
19 irreparably injured by the availability on Pacer  
20 of your briefs and other court filings?

21 A Again, I don't know that I'd say it  
22 that way. I don't -- they have -- it's a  
23 different situation in my mind.

24 Q And what is the difference?

25 A The federal systems for filing

1 E. White

2 pleadings, Pace is anyway, and it's a part of  
3 how lawyers do business.

4 Q And it's been -- the public  
5 availability of court filings have been part of  
6 the way lawyers do business since long before  
7 the invention of Pacer, correct?

8 A Generally speaking, court files  
9 open, yes. But they're not indexed and they're  
10 not available in an Internet search.

11 MR. MARKS: We've reached a  
12 convenient break point for lunch. Why  
13 don't we take however long you guys want  
14 to take for 40 minutes, half-hour?

15 MR. BLUE: Why don't we go off the  
16 record?

17 VIDEOGRAPHER: The time is 12:50  
18 and we're off the record.

19 (Whereupon, at 12:50 p.m., a recess  
20 was taken to 1:34 p.m.)

21 (The deposition resumed with all  
22 parties present.)

23 VIDEOGRAPHER: The time is 1:34 and  
24 this begins tape number three of the  
25 videotaped deposition of Edward L.



1 E. White

2 White.

3 Q Mr. White, I'd like to start by  
4 asking you a question that was asked earlier  
5 today, and I understand from my colleagues that  
6 the transcript may not have come out clearly so  
7 bear with me, I'm just going to ask the question  
8 again.

9 We were speaking earlier today  
10 about the summary judgment motion that you  
11 filed on behalf of Miss Beer and Miss Bique in  
12 the Beer v. XTO Energy case.

13 Do you recall that?

14 A Yes.

15 Q Did the possibility that someone  
16 might make a copy of your summary judgment  
17 motion and supporting brief from Pacer and  
18 distribute that material affect your decision to  
19 write the summary judgment motion?

20 A No.

21 Q Your professional reputation has  
22 not been compromised by the fact that West Law  
23 and Lexis subscribers have been able to access  
24 some of your court filings through those  
25 services, has it?

1 E. White

2 A I don't believe so.

3 Q And your ability to represent  
4 clients effectively has not been comprised by  
5 the availability of some of your past court  
6 filings on West Law or Lexis, has it?

7 A My ability to represent them  
8 effectively has not been compromised, but as I  
9 explained, I think it affects my business.

10 Q Because other lawyers are able to  
11 compete for business with you by -- through  
12 access to your briefs?

13 A Well, as we've discussed, but yes,  
14 essentially.

15 Q The brief filed on your behalf in  
16 opposition to West's and Lexis's partial motions  
17 to dismiss cited briefs written by other  
18 lawyers, correct?

19 A I believe that's correct.

20 Q I don't want to make this a memory  
21 test. Let me hand you a copy of plaintiff's  
22 memorandum of law in opposition to defendants'  
23 motions to dismiss filed on your behalf in this  
24 case.

25 If I could point your attention to

1 E. White

2 Q Do you recall approximately when  
3 you registered to file with the Western -- to be  
4 authorized to file electronically with the  
5 Western District of Oklahoma?

6 A It was before it became mandatory,  
7 but I don't recall what year that was. There  
8 was a voluntary period where you could either  
9 file in paper file or file electronically, and  
10 then there was a point where it became mandatory  
11 and I had registered prior to that mandatory  
12 point.

13 Q Are you registered with any state  
14 courts to file electronically?

15 A No.

16 MR. WHITNEY: I'm going to mark two  
17 documents here just to speed up the  
18 process. The first document marked as  
19 White 11 is documents Bates numbered P25  
20 to P29. And the second marked as White  
21 12 is a document Bates numbered P86 to  
22 P91.

23 (E-mail bearing Bates numbers P25  
24 to P29 was marked as White Exhibit  
25 No. 11 for identification, as of

1 E. White

2 this date.)

3 (E-mail bearing Bates numbers P86  
4 to P91 was marked as White Exhibit  
5 No. 12 for identification, as of  
6 this date.)

7 Q Mr. White, have you seen what's  
8 been marked as Exhibit 11 before, which is the  
9 one that starts with Bates number P25?

10 A Yes.

11 Q And what is it?

12 A This is the -- a copy of the e-mail  
13 that's received from the court upon filing of a  
14 document and this particular one is document  
15 176, a motion in limine.

16 Q And is this the motion in limine  
17 that is at issue in this case that you're  
18 accusing Lexis and West and copyright  
19 infringement on?

20 A I believe it's the same one, yes.

21 Q And Exhibit 12 for Bates number  
22 P86, can you tell me what that document is?

23 A It's the same kind of thing, it's  
24 an e-mail notice regarding the motion for  
25 summary judgment.

1 E. White

2 Q And is that the same -- is that the  
3 motion for summary judgment that is at issue in  
4 this case that you're accusing West and Lexis of  
5 copyright infringement on?

6 A I believe so, there are two but I  
7 think this is the correct one.

8 Q Did you receive these notices after  
9 filing the Works at issue in the Beer v. XTO  
10 Energy case?

11 A Yes, I would have received a notice  
12 by e-mail.

13 Q Do you have an understanding of who  
14 can get these notices?

15 A Anyone who's entered an appearance  
16 in the case, any counsel or parties or pro se  
17 entered an appearance, and I think in this  
18 particular instance it indicates on page P87 who  
19 got the notice.

20 Q Do you know if attorneys who are  
21 not representing parties in this case can  
22 receive these ECF notices?

23 A I don't receive any in cases where  
24 I'm not an attorney but it's possible I suppose.

25 Q What was your understanding of the

1 E. White

2 availability of these briefs after they were  
3 filed?

4 MR. BLUE: Objection, asked and  
5 answered.

6 You can answer it again.

7 A My -- I knew that they were filed  
8 and therefore available on Pacer and also I  
9 believe that you could get a -- I say this -- I  
10 think you can get a paper copy at the courthouse  
11 although I have not done that in a long time.

12 Q If I can turn you to the -- sort of  
13 the top third of these documents, we can look at  
14 Exhibit 11 but you can see that the same  
15 language exists on Exhibit 12. It says, the  
16 second to last sentence above where it says U.S.  
17 District Court near in the middle of the page,  
18 "To avoid later charges, download a copy of each  
19 document during this first viewing." If you  
20 want to back it up it says -- let me read the  
21 whole paragraph to make it clear.

22 "Judicial conference of the United  
23 States policy permits attorneys of record and  
24 parties in a case (including pro se  
25 litigations) to receive one free electronic

1 E. White

2 copy of all documents filed electronically if  
3 receipt is require by law or directed by the  
4 filing. Pacer access fees apply to all other  
5 users. To avoid later charges, download a copy  
6 of each document during the first viewing.  
7 However, if the reference document is a  
8 transcript, the free copy and 30 page limit do  
9 not apply."

10 Do you see where it says that?

11 A Yes.

12 Q When you -- do you receive these  
13 notices when other attorneys file briefs in  
14 cases in which you are representing a party?

15 A Yes.

16 Q Do you download a copy of that  
17 document upon receiving these notices?

18 A I typically don't, but Jan does on  
19 my behalf.

20 Q What do you or Jan do with the  
21 document after it's downloaded?

22 A Typically it's saved to our  
23 computer files.

24 Q And do you print out that document  
25 on occasion, those documents on occasion?

1 E. White

2 significant limitation.

3 Q And is it your understanding that  
4 copyright prohibits an individual from copying a  
5 document without the authority of the copyright  
6 owner?

7 MR. BLUE: Objection, calls for  
8 legal conclusion.

9 You can answer.

10 A As a general rule, absent an  
11 argument for fair use, yes.

12 Q And are you aware that a document  
13 available on Pacer can be copied by any member  
14 of the general public without permission of the  
15 copyright owner?

16 MR. BLUE: You're talking once  
17 again that it -- that's it's possible  
18 that it's done or are you saying that  
19 it's lawful?

20 MR. WHITNEY: I'm saying say it's  
21 authorized by the person that filed the  
22 document.

23 A So I'm sorry --

24 MR. WHITNEY: I'm sorry. On that  
25 basis I'll object on vague. If you can



1 E. White

2 restate it I would appreciate it.

3 Q Okay. Are you aware that by filing  
4 a document with ECF, you are authorizing any  
5 member of the public to access and copy the  
6 document filed through ECF?

7 MR. BLUE: Objection calls, for a  
8 legal conclusion.

9 You can answer.

10 A I'm aware of the idea as expressed  
11 in this policy that litigants -- litigants  
12 receive a free copy and others can purchase  
13 copies as specified here.

14 MR. BLUE: I just want the record  
15 to show that Mr. White is referring to  
16 Exhibit No.

17 THE WITNESS: 15.

18 MR. BLUE: 15.

19 Q Do you have any objection to  
20 members of the public accessing your document, a  
21 document that you had filed with the court via  
22 ECF accessing it via Pacer?

23 A Not generally.

24 Q Do you have a specific objection to  
25 a member of the public accessing a document you

1 E. White

2 filed via ECF via Pacer?

3 A I don't have an objection to them  
4 accessing it, I have an objection to what  
5 happened to information that Lexis and West  
6 accessed, but the access initially, no.

7 Q Do you have any objection to a  
8 member of the public making a copy of the brief  
9 that you have filed with the court via ECF via  
10 Pacer?

11 A Not in general terms.

12 Q Do you have any specific objection  
13 to a member of the public making a copy of a  
14 brief you have filed with the court via ECF via  
15 Pacer?

16 A Well again, I filed suit, so I have  
17 an objection here. But other than this case, I  
18 don't know of any specific objectionable  
19 instances.

20 Q So other than West and Lexis, you  
21 have no objection to any member of the public  
22 copying, making a copy of a brief you have filed  
23 via ECF via Pacer?

24 A Objection to the extent it was  
25 asked and answered earlier.

1 E. White

2 But otherwise, you can answer.

3 A I don't have a specific objection  
4 at this time. I can see again hypotheticals  
5 where I might have an objection, but I don't  
6 know of any other than what I'm complaining  
7 about here.

8 Q And you recognize that members of  
9 the public may have made copies of briefs that  
10 you have filed with the courts via ECF via  
11 Pacer?

12 A It's possible.

13 MR. WHITNEY: We're going to mark  
14 Exhibit 16.

15 (Reed Elsevier Inc.'s (Lexis) First  
16 Request for Documents was marked as  
17 White Exhibit No. 16 for  
18 identification, as of this date.)

19 Q Just had the court reporter mark  
20 Exhibit 16, which Plaintiff's Response to  
21 Defendant Reed Elsevier Inc.'s (Lexis) First  
22 Request for Documents. Lexis is in parenthesis.

23 Have you seen this before, Mr.  
24 White?

25 A Yes.

1 E. White

2 of our initial discussions of his work for the  
3 firm.

4 Q Around what time would that have  
5 been?

6 A I don't really know, I would say  
7 2003, in that time frame. Could have been  
8 earlier, 2002.

9 Q Do you recall a specific  
10 conversation in this regard?

11 A No, it was ten years ago. But I  
12 recall that the subject matter of intellectual  
13 property and when intellectual property practice  
14 came up and to the extent he Works for the firm,  
15 it's the firm's property.

16 Q Okay. Request number 25 -- see  
17 we're skipping right -- moving right along.

18 A That's nice.

19 Q The request seeks all  
20 communications between you and LexisNexis  
21 regarding the Works -- no, I'm sorry. All  
22 communications between you and LexisNexis. The  
23 response, notwithstanding the general objections  
24 as to the complaint work, plaintiffs have no  
25 responsive documents.

1 E. White

2 Do you see that?

3 A Yes.

4 Q Have there been any communications  
5 between you and LexisNexis regarding the Works  
6 at issue in this case?

7 A I don't believe so. Other than the  
8 litigation.

9 Q Of course. Have there been any  
10 communications between you and West Law  
11 regarding the Works at issue in this case?

12 A Other than the litigation  
13 communications, no.

14 Q Request number 26 seeks all  
15 communications with third parties other than  
16 counsel of record in this case about LexisNexis.  
17 The response, notwithstanding the general  
18 objections as to the complaint Works, plaintiffs  
19 have no responsive documents.

20 Do you see that?

21 A Yes.

22 Q Have there been any communications  
23 with third parties other than counsel of record  
24 in this case about LexisNexis with regard to the  
25 Works at issue in this case?

1 E. White

2 A Yes.

3 Q Have there been any written  
4 communications with third parties other than  
5 counsel of record in this case about LexisNexis  
6 with regard to the Works at issue in this case?

7 A No.

8 Q Do you recall any -- have there  
9 been any oral communications with third parties  
10 other than counsel of record in this case about  
11 LexisNexis with regard to the Works issue in  
12 this case?

13 A Yes. And as it relates to these  
14 communications or this question, generally as  
15 I've said, I know I've had communication with  
16 other colleagues and friends that are counsel  
17 about this particular issue. I don't know the  
18 specific communications but there are along the  
19 lines of did you know this was happening and  
20 that sort of thing.

21 Q Other than those conversations with  
22 colleagues, just letting them know what's  
23 happening, have you had any other communications  
24 regarding the work -- about LexisNexis with  
25 regard to the Works at issue in this case?

1 E. White

2 A I don't think so.

3 Q And the same response with regard  
4 to West Law?

5 A Correct.

6 Q Look at request number 28. That  
7 request seeks all correspondence, including, but  
8 not limited to cease and desist letters and take  
9 down notices with any person requesting that the  
10 copyrighted material be removed from any  
11 publicly available sources, whether available  
12 for free or for cost regardless of time period.  
13 The response, notwithstanding the general  
14 objections as to the complaint Works,  
15 plaintiff's have no responsive documents.

16 Do you see that?

17 A Yes.

18 Q Other than the complaint in this  
19 action, do you have any correspondence with any  
20 person requesting that copyrighted material be  
21 removed from any publicly available sources?

22 A As to the Works, no.

23 Q Do you have any correspondence with  
24 any person requesting the copyrighted material  
25 be removed from any publicly available sources

1 E. White

2 not -- not including the Works?

3 A Well, I've represented clients in  
4 that context and asked for their Works to be  
5 removed from various sources.

6 Q Have you ever asked for Works that  
7 are -- that Edward L. White, P.C. claims  
8 copyright ownership to be removed from any  
9 publicly available sources other than the  
10 complaint in this action?

11 A I don't believe so.

12 Q Did you search for documents  
13 responsive to these requests for production?

14 A Yes.

15 Q And what did you do in that search?

16 A Several things. I directed Jan to  
17 get together some things, some obvious  
18 categories of materials. There was some, the  
19 registration form. I asked -- I asked her to  
20 look for documents that she might have in her  
21 computer or in the paper files that responded  
22 and then I did a search on my computer for  
23 responsive materials as well.

24 Q Did you search through e-mail?

25 A I searched through e-mail, yes.



1 E. White

2 A Is that the person at OCU who  
3 accessed?

4 Q Maybe.

5 MR. BLUE: You don't get to ask  
6 questions.

7 THE WITNESS: I get to ask. I  
8 don't usually get the answers.

9 Q Other than on Lexis or West Law or  
10 in a court's electronic document system, are you  
11 aware of any documents that you authored and  
12 filed with the court are available on line?

13 A I believe that one or more of the  
14 documents filed in the Beer versus XTO case is  
15 on file associated with the web site that's  
16 maintained for that case.

17 Q Any other examples?

18 A It would not -- no, I'm not aware  
19 of any specific examples.

20 MR. WHITNEY: Okay, let's take a  
21 break here. I may be able to wrap it up  
22 soon.

23 VIDEOGRAPHER: The time is 2:49 and  
24 we're off the record.

25 (Whereupon, at 2:49 p.m., a recess

1 E. White

2 was taken to 2:58 p.m.)

3 (The deposition resumed with all  
4 parties present.)

5 VIDEOGRAPHER: The time is 2:58 and  
6 we're back on the record.

7 Q Mr. White, to the extent that  
8 anyone accessed your briefs on Lexis or West  
9 Law, you're not aware of the reasons why they  
10 did, correct?

11 A Correct.

12 Q And you did not create the motion  
13 for summary judgment at issue in this case in  
14 order to license or sell it to other lawyers,  
15 correct?

16 A Not -- not for that purpose.

17 Q And you did not create the motion  
18 in limine at issue in this case license in order  
19 to license or sell it to other lawyers, correct?

20 A Same answer.

21 Q Has anyone ever offered to license  
22 any of your briefs, pleadings or motions?

23 A Not directly.

24 Q Have they offered indirectly?

25 A Well, to the extent I've been

1 E. White

2 contacted and people have asked me to serve as  
3 co-counsel on the case, I think in part that's  
4 the work on cases I've done and they know I have  
5 knowledge that is embodied in those briefs.

6 Q But they've offered to retain you  
7 as co-counsel?

8 A Correct.

9 Q They haven't offered to license a  
10 brief that you had previously offered?

11 A Correct.

12 Q And have you ever attempted to  
13 license any of the Works you've created and  
14 filed with courts of record?

15 A You mean to sell a, "Here's a copy  
16 for \$50," that kind of a transaction.

17 Q Correct.

18 A No.

19 MR. MARKS: Nothing further.

20 MR. BLUE: Nothing from the  
21 plaintiff.

22 VIDEOGRAPHER: The time is 2:59 p.m.  
23 and we're off the record.

24 (Time noted: 2:59 p.m.)

25

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1 E. White

2 EDWARD L. WHITE

3  
4  
5 Subscribed and sworn to before me

6 this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

7 \_\_\_\_\_  
8 NOTARY PUBLIC  
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